

McElroy, Deutsch, Mulvaney & Carpenter, LLP  
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Attorneys for Defendant,  
American Counsel of Engineering Co.

By:   
Steven P. Del Mauro (SPD-9689)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

EDWARD D. ANDREWS,

Plaintiff,

vs.

AMERICAN COUNSEL OF ENGINEERING,  
CO.,

Defendant.

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: CIVIL ACTION NO.  
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CIVIL ACTION - NOTICE OF REMOVAL

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**PLEASE TAKE NOTICE** that the undersigned attorneys for defendant, American Counsel of Engineering Co. ("American"), petition this Honorable Court for an order pursuant to 28 U.S.C. § 1441, et seq., removing to the United States District Court, Southern District of New York, a matter instituted in the Civil Court of the City of New York, Small Claims Part, bearing index number 3442/05-1.

**PLEASE TAKE FURTHER NOTICE** that a copy of this removal petition has been filed with the Civil Court of the City of New York, thereby effecting removal pursuant to 28 U.S.C. §

1446(b).

**PLEASE TAKE FURTHER NOTICE** that by effecting removal of this civil action, American reserves all rights to raise any all defenses available under the Federal Rules of Civil Procedure including, but not limited to, FED. R. CIV. P. 12.

**PLEASE TAKE FURTHER NOTICE** that in support of this notice of removal, American relies upon the following:

1. Edward D. Andrews (“Andrews”) filed a complaint in the Civil Court of the City of New York, Small Claims Part, bearing index number 3442/05-1. Annexed hereto as Exhibit “A” is a copy of the notice of claim and summons to appear which constitutes all process, pleadings and/or orders served upon and/or first received by American to date within the meaning and intent of 28 U.S.C. § 1446.

2. As of the filing of this removal petition, American has not been properly and/or validly served with summons and complaint. Nonetheless, on July 28, 2005, American first had knowledge of the institution of suit and the basis for the removal of this civil action when it received the documents annexed hereto as Exhibit “A”. Removal is therefore timely under 28 U.S.C. § 1446(b) in that the filing of the within petition occurred within thirty (30) days of the service of summons and complaint.

3. The Court’s review of the notice of claim and summons will reveal that Edwards commenced this action to recover monies arising out of non-payment of an insurance claim. Indeed, Trustmark Insurance Company had issued a certificate of insurance to Infra Tech Associates, which certificate provides health benefits to its employees including Andrews. Andrews, as an employee of Infra Tech Associates, was afforded medical benefits under the certificate of insurance issued by Trustmark. The gravamen of the complaint relates to and concerns Andrews’ claim for benefits

under the certificate of insurance.

4. The certificate of insurance issued by Trustmark funds, in whole or in part, an Employee Welfare Benefit Plan established or maintained by Andrews' employer, Infra Tech Associates. Given the applicability of ERISA, pursuant to 29 U.S.C. § 1132(e), the United States District Courts are provided with subject matter jurisdiction over all matters for, inter alia, benefits provided under employee welfare benefit plans, including the plan made the subject of the action instituted by Andrews. Furthermore, pursuant to 29 U.S.C. § 1144, the terms and provisions of ERISA totally pre-empt all state causes of action, including causes of action for breach of contract and otherwise. Removal is therefore appropriate under and pursuant to 28 U.S.C. § 1441(a) and (b). See Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58 (1987).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**McELROY, DEUTSCH, MULVANEY  
& CARPENTER, LLP**

Attorneys for Defendant,  
American Counsel of Engineering Co.

Date: August 25, 2005

By: 

Steven P. Del Mauro (SPD-9689)

Trustmark/Andrewsr/American Removal/Notice of Removal  
T4369

# **EXHIBIT A**

CIVIL COURT OF THE CITY OF NEW YORK SMALL CLAIMS PART	
ALL CENTRE STREET - RM. 325 NEW YORK, NY 10014-4399	
FILE NUMBER	SC-17 2442/25-1
DEFENDANT	AMERICAN COUNCIL OF ENGINEERING CO 60 EAST 42ND STREET STE 1742 NEW YORK CITY, NY 10165
2. Plaintiff's Name	7176 6516 ADDD 2498 6731

NOTICE TO DEFENDANT - NOTICE OF CLAIM and SUMMONS TO APPEAR	
This is the start of a lawsuit against you. It should not be ignored. You do not have to answer this notice, but you must appear in court on the date and time specified below. If you do not appear, the court will decide the case for you.	
FILE NUMBER	SC-17 2442/25-1
DEFENDANT	AMERICAN COUNCIL OF ENGINEERING CO 60 EAST 42ND STREET STE 1742 NEW YORK CITY, NY 10165
DATE AND TIME OF HEARING	September 6, 2005 at 6:10 PM
COURT	Small Claims Court

NOTICE TO PLAINTIFF - NOTICE OF CLAIM and SUMMONS TO APPEAR	
This is the start of a lawsuit against you. It should not be ignored. You do not have to answer this notice, but you must appear in court on the date and time specified below. If you do not appear, the court will decide the case for you.	
FILE NUMBER	SC-17 2442/25-1
PLAINTIFF	EDWARD D ANDREWS 2805 UNIVERSITY AVE APT 61 BRONX, NY 10468
DATE AND TIME OF HEARING	September 6, 2005 at 6:10 PM
COURT	Small Claims Court

CASE FILE NUMBER: 7176 6516 ADDD 2498 6731	
INDEX NUMBER	SC-17 2442/25-1
DATE	8/5
CLAIMANT	EDWARD D ANDREWS 2805 UNIVERSITY AVE APT 61 BRONX, NY 10468
DEFENDANT	AMERICAN COUNCIL OF ENGINEERING CO 60 EAST 42ND STREET STE 1742 NEW YORK CITY, NY 10165
A Guide to Small Claims Court is available at the court listed above.	

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